



**THOMAS A. O'ROURKE  
BODNER & O'ROURKE  
425 BROADHOLLOW RD., STE. 108  
MELVILLE, NY 11747**

**COPY MAILED**

**SEP 20 2005**

**OFFICE OF PETITIONS**

In re Application of :  
Gregory Moulton et al :  
Application No. 10/023,473 : **ON PETITION**  
Filed: December 17, 2001 :  
For: CURRENT CARRYING STRETCH HOSE :

This is a decision on the petition under 37 CFR 1.137(b), filed August 18, 2005, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." Petitioner is advised that this is **not** a final agency action decision.

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner to the final Office action mailed July 13, 2004, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on October 14, 2004.

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply (unless previously filed), which may met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute, but must be the payment of the issue fee or any outstanding balance thereof in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof;
- (2) the petition fee as set forth in 37 CFR 1.17(m);
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and
- (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)).

The instant petition does not satisfy requirement (2) above.

As to item (2), the fee for a petition to revive under the unintentional standard of 37 CFR 1.137(b) is \$1,500. With the present petition, petitioner has submitted \$1,370. Accordingly, a consideration on the merits of the present petition cannot be made until the \$130 fee deficiency is submitted to the Office.

The statement of unintentional delay presented in the petition does not comply with the current rule. Effective December 1, 1997, 37 C.F.R. §1.137 (b)(3) requires a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. §1.137(b) was unintentional" be submitted. However, the statement presented will be accepted and construed as meaning that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. §1.137(b) was unintentional." If this is an incorrect interpretation in view of the rules, petitioner is required to provide a statement to that effect.

Further correspondence with respect to this matter should be addressed as follows:

By mail:                      Mail Stop PETITIONS  
                                    Commissioner for Patents  
                                    Post Office Box 1450  
                                    Alexandria, VA 22313-1450

By hand:                     Customer Service Window  
                                    Randolph Building  
                                    401 Dulany Street  
                                    Alexandria, VA 22314

By fax:                        (571) 273-8300  
                                    ATTN: Office of Petitions

Telephone inquiries concerning this decision should be directed to Wan Laymon at (571) 272-3220.



Wan Laymon  
Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy